

STATE OF WISCONSIN
CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF RULEMAKING PROCEEDINGS BEFORE THE
CHIROPRACTIC EXAMINING BOARD

ORDER OF THE CHIROPRACTIC EXAMINING BOARD ADOPTING RULES
CLEARINGHOUSE RULE 14-069

ORDER

An order of the Chiropractic Examining Board to create ch. Chir 13 relating to the duty to inform patients of treatment options.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Section 446.08, Stats.

Statutory authority:

Sections 15.08 (5) (b), 227.11 (2) (a), 446.02 (11), Stats. and 2013 Wisconsin Act 345

Explanation of agency authority:

Pursuant to ss. 15.08 (5) (b) and 227.11 (2) (a), Stats., the Chiropractic Examining Board is generally empowered by the legislature to promulgate rules that will provide guidance within the profession and that interpret the statutes it enforces or administers. Section 446.02 (11), Stats., gives express authority to the Chiropractic Examining Board to promulgate rules implementing s. 446.08, Stats., concerning informed consent. The legislature granted this express rule-making provision with the passage of 2013

Wisconsin Act 345. The proposed rule seeks to carry out this legislative mandate by incorporating the new standard regarding informed consent into the current chiropractic rules.

Related statute or rule:

None.

Plain language analysis:

On April 23, 2014, the Legislature enacted 2013 Wisconsin Act 345 which granted express rule-making authority to the Chiropractic Examining Board to promulgate rules concerning chiropractors and informed consent. This proposed rule addresses what was previously a common law duty under *Hannemann v. Boyson*, 2005 WI 94. Under the common law standard, chiropractors were to advise their patients of all alternate viable medical modes of treatment. Chiropractors were held to the reasonable person standard which required chiropractors to inform their patients of information necessary for a reasonable person to make an intelligent decision with regard to treatment. 2013 Wisconsin Act 345 changed the standard for chiropractors from the reasonable person standard to the reasonable chiropractor standard which requires disclosure only of the information that a reasonable chiropractor would know and disclose under the circumstances. The proposed rule creates a new chapter codifying the new standard into the current Chiropractic rules.

Summary of, and comparison with, existing or proposed federal regulation:

None.

Comparison with rules in adjacent states:

Illinois: Illinois does not have comparable statutory requirement for chiropractors to obtain informed consent from their patients.

Iowa: Iowa does not have comparable statutory requirement for chiropractors to obtain informed consent from their patients.

Michigan: Michigan does not have comparable statutory requirement for chiropractors to obtain informed consent from their patients.

Minnesota: Minnesota does not have comparable statutory requirement for chiropractors to obtain informed consent from their patients.

Summary of factual data and analytical methodologies:

No factual data or analytical methodologies were used in drafting the proposed rule due to the proposed rule being prompted by the passage of 2013 Wisconsin Act 345.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at Eric.Esser@wisconsin.gov, or by calling (608) 267-2435.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis document is attached.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at Eric.Esser@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

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TEXT OF RULE

SECTION 1. Chapter Chir 13 is created to read:

CHAPTER CHIR 13
INFORMED CONSENT

Chir 13.01 Authority and purpose. (1) **AUTHORITY.** The rules in this chapter are adopted pursuant to the authority delegated by ss. 15.08 (5) (b), 227.11 (2) (a), and 446.08, Stats.

(2) **PURPOSE.** The purpose of the rules is to define the obligation of a chiropractor to communicate alternate modes of treatment to a patient.

Chir 13.02 Informed consent. Any chiropractor who treats a patient shall inform the patient about the availability of reasonable alternate modes of treatment and about the benefits and risks of these treatments. The reasonable chiropractor standard is the standard for informing a patient. The reasonable chiropractor standard requires disclosure only of information that a reasonable chiropractor would know and disclose under the circumstances.

Chir 13.03 Exceptions to communication of alternate modes of treatment.

The chiropractor's duty to inform patients of alternate modes of treatment does not require disclosure of any of the following:

- (1) Detailed technical information that in all probability a patient would not understand.
- (2) Risks apparent or known to the patient.
- (3) Extremely remote possibilities that might falsely or detrimentally alarm the patient.
- (4) Information in emergencies where failure to provide treatment would be more harmful to the patient than treatment.
- (5) Information in cases where the patient is incapable of consenting.
- (6) Information about alternate modes of treatment for any condition the chiropractor has not included in their diagnosis at the time the chiropractor informs the patient.

Chir 13.04 Recordkeeping. A chiropractor's patient record shall include documentation that he or she has communicated alternate modes of treatment to their patient and has obtained informed consent from their patient in keeping with s. Chir 11.02 (5).

SECTION 2. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)
